

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

In re: RIDGEWOOD AFFORDABLE LLC
(Ridgewood Apartments)

RFA 2016-110
Application No. 2017-081C

FHFC Case No. 2018-52VW

PETITION FOR WAIVER OF RULE 67-48.004(3)(g)
TO CHANGE DEVELOPMENT TYPE

Petitioner, Ridgewood Affordable LLC, by and through undersigned counsel and pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code, hereby petitions the Florida Housing Finance Corporation (“Florida Housing”) for a waiver of the requirement in Rule 67-48.004(3)(g), Florida Administrative Code, to allow Petitioner to change the Development Type from Garden Apartments to Townhouses because the Development Type that best describes the majority of the units is Townhouses. In support thereof, Petitioner states:

The Petitioner

1. The name of the Petitioner is Ridgewood Affordable LLC. For purposes of this proceeding, the address, email address, telephone number, and fax number are that of Petitioner’s undersigned counsel.

The Development

2. Requested background information:

| | |
|------------------------|---|
| Development name: | Ridgewood Apartments |
| Developer/Principal: | Southport Development, Inc. a WA corporation doing business in FL as Southport Development Services, Inc./ J. David Page |
| Number of units: | 33 |
| County of development: | Polk |
| Type: | Garden Apartments/Townhouses |
| Set Asides: | 30 % at 40% AMI, 70% at 60% AMI |
| Demographic: | Family |
| Funding: | 9% LIHTC: \$330,000 annual credit request. |

3. Petitioner timely submitted its Application No. 2017-081C in response to RFA 2017-110, Housing Credit Financing for Affordable Housing Developments Located in Medium and Small Counties (the “RFA”). The Application is for the acquisition and rehabilitation of an existing 33-unit development located in Winter Haven, Florida, called Ridgewood Apartments (the “Development”). The existing Development includes both Garden Apartments (9 Units) and Townhouses (24 Units). As the Application is for acquisition and rehabilitation, the completed (rehabilitate) Development likewise will include the same mix of both Garden Apartments and Townhouses. The Application was selected for funding, Florida Housing issued its carryover allocation agreement, and Petitioner has closed on permanent and LITHC financing and commenced construction (rehabilitation) of the units. The Development is currently going through credit underwriting.

4. In its Application, Petitioner selected “Garden Apartments” as the Development Type. As noted, the Development in fact includes Garden Apartments, all of which will be rehabilitated as Garden Apartments. However, Petitioner should have selected “Townhouses” because the RFA requires that, when the Development consists of multiple types, the Application should select as the Development Type that which will comprise the majority of the units in the Development. Here, the majority of the existing units are Townhouses; the balance are Garden Apartments.

The Rule For Which The Waiver Is Sought

5. Petitioner requests a waiver of Rule 67-48.004(3)(g), Florida Administrative Code (the Rule). The Rule provides as follows:

(3) For the SAIL, HOME and Housing Credit Programs, notwithstanding any other provision of these rules, the following items as identified by the Applicant in the Application must be maintained and cannot be changed by the Applicant after the applicable submission, unless provided otherwise below:

(g) Development Type;

6. Petitioner requests a waiver of the requirement in Rule 67-48.004(3)(g) to allow Petitioner to change the Development Type for Ridgewood Apartments from “Garden Apartments” to “Townhouses,” because the Development Type that best describes the majority of the 33 units to be rehabilitated is Townhouses. There will be no change in how the units will be

rehabilitated; all 9 Garden Apartments will be rehabilitated as Garden Apartments and all 24 Townhouses will be rehabilitated as Townhouses.

Statutes Implemented By The Rule

7. The Rule implements Sections 420.5087 (State Incentive Loan Program), 420.5089 (HOME Investment Partnership Program) and 420.5099 (Allocation of the low-income housing tax credit), all of which are part of the Florida Housing Finance Corporation Act. One of the purposes of the Act is to encourage the construction and reconstruction of new and rehabilitated housing to meet the shortage of decent, safe and sanitary housing for person and families of low, moderate and middle income.

Justification For The Requested Waiver or Variance

8. Florida Housing has the authority to grant waivers of its rule requirements when strict application would lead to unreasonable, unfair, and unintended consequences in particular instances. Section 120.541(1), F.S. A waiver shall be granted when the person who is subject to the rule demonstrates that application of the rule would: (1) create a substantial hardship or violate principles of fairness; and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. Section 120.542(2), F.S.

9. Petitioner requests a waiver of the requirement in Rule 67-48.004(3)(g) to allow Petitioner to change the Development Type for Ridgewood Apartments from “Garden Apartments” to “Townhouses,” simply because the majority of the 33 units to be rehabilitated are Townhouses. There will be no change in how the units will be rehabilitated; all 9 Garden Apartments will be rehabilitated as Garden Apartments and all 24 Townhouses will be rehabilitated as Townhouses

10. The Development involves the rehabilitation of both Garden Apartments and Townhouses, and the RFA provides that the Total Development Cost (TDC) per Base Unit Limitation is the same for both Development Types. See RFA at p. 104. Indeed, the RFA

establishes the TDC for “Garden” and “Non-Garden” and includes Townhouses in the category for “Garden.” Id. As such, changing the Development Type here will have no impact on the TDC for this Development.

11. The scoring and funding of the Application would not have been affected had the Applicant selected the “Townhouses” Development Type when it submitted its Application. Likewise the change in Development Type would not have affected the Application or its score in any manner.

12. On the other hand, denying the request would impose a significant hardship on Petitioner, as it is impracticable—if not impossible—to rehabilitate the existing 24 Townhouses as Garden Apartments. This would require tearing down the units and rebuilding them, which would constitute new construction or redevelopment—not rehabilitation—and clearly would be cost prohibitive.

13. Florida Housing recently has approved other requests to change the Development Type. *E.g., In Re: Caribbean Village*, FHFC Case No. 2018-030VW (final order dated May 4, 2018).

14. Here, Petitioner has satisfied the requirements justifying waiver of the Rule. Granting the waiver will not have any impact on other participants in funding programs administered by Florida Housing, nor will it have a detrimental impact on Florida Housing or the Development. Granting the requested waiver or variance also will ensure that 33 affordable family housing units will be rehabilitated for the target population in Winter Haven, in Polk County. Denial of Petitioner’s request (a) would result in substantial economic hardship to Petitioner, as it has already closed on financing, started construction and incurred significant costs to date toward ensuring that the Development proceeds to completion, and (b) would deprive Polk County of

essential affordable housing.¹ Further, granting the waiver or variance will serve the purposes of the statute and the Florida Housing Finance Corporation Act because one of the purposes of the Act is to encourage the construction and reconstruction of new and rehabilitated housing to meet the shortage of decent, safe and sanitary housing for person and families of low, moderate and middle income.

Petitioner Requests A Permanent Waiver

15. Petitioner requests a permanent waiver of the requirement in Rule 67-48.004(3)(g).

Action Requested

WHEREFORE, Petitioner respectfully requests that Florida Housing:

A. Grant this Petition and all of the relief requested herein;

B. Grant the requested waiver of the requirement in Rule 67-48.004(3)(g) to allow Petitioner to change the Development Type for Ridgewood Apartments from “Garden Apartments” to “Townhouses,” as the Development Type that best describes the majority of the units is Townhouses.

C. Grant such further relief as it may deem appropriate.

Respectfully submitted on June 28, 2018.

/s/Lawrence E. Sellers, Jr.
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¹ The required use agreement will insure that the property will maintain its affordability for 50 years; otherwise, the property may revert to market rate at a much earlier date.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this Petition for Waiver of Rule 67-48.004(3)(g) to Change Development Type was filed by email with Ana McGlamory, Agency Clerk, ana.mcglamory@floridahousing.org, and that a copy of the original physically signed Petition shall be delivered within five business days to the Agency Clerk; that a true and correct copy was provided by email to Hugh Brown, General Counsel, hugh.brown@floridahousing.org, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301; and that a true and correct copy was provided to the Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 West Madison Street, Tallahassee, Florida 32399-1400, and via email to joint.admin.procedures@leg.state.fl.us, all on June 28, 2018.

/s/Lawrence E. Sellers, Jr. _____
Lawrence E. Sellers, Jr.